

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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CHARLOTTE BENNETT, : Case No.: 22-cv-7846  
Plaintiff, :  
v. :  
ANDREW M. CUOMO, et al., : New York, New York  
Defendants. : November 7, 2024  
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TRANSCRIPT OF STATUS CONFERENCE HEARING  
BEFORE THE HONORABLE SARAH L. CAVE  
UNITED STATES MAGISTRATE JUDGE

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1 THE COURT: Good afternoon. This is  
2 Magistrate Judge Cave. We're here for a conference  
3 in Bennett v. Cuomo; Case Number: 23-cv-7846.

4 We have a lot of people on the line, so I  
5 would like to start with appearances of plaintiff's  
6 counsel, please.

7 MS. SCHNELL: Good morning, Your Honor.  
8 This is Laura Schnell at Eisenberg & Schnell for  
9 plaintiff, Charlotte Bennett. Also on the phone for  
10 plaintiff is Herbert Eisenberg at Eisenberg &  
11 Schnell and Debra Katz and Rachel Green from Katz  
12 Banks Kumin.

13 THE COURT: Thank you very much.  
14 For Mr. Cuomo?

15 MS. GLAVIN: Yes. Good morning, Your  
16 Honor. Rita Glavin of Glavin PLLC for former  
17 governor Andrew M. Cuomo.

18 THE COURT: Okay. Good afternoon.  
19 For Ms. DeRosa?

20 MR. MORVILLO: Good afternoon, Your Honor.  
21 Gregory Morvillo and Sarah Sulkowski on behalf of  
22 Ms. DeRosa.

23 THE COURT: Thank you.  
24 For Ms. DesRosiers?

25 MR. HAMID: Good afternoon, Your Honor.

1 This is Jyotin Hamid at Debevoise & Plimpton. I  
2 believe my colleague, Soren Schwab, at Debevoise is  
3 also on the line.

4 THE COURT: All right.

5 For Ms. Mogul?

6 MR. DELIKAT: Mike Delikat and Brianna  
7 Messina from Orrick.

8 Judge, there's a lot of background noise.  
9 Could you ask everyone to go on mute when they're  
10 not on?

11 THE COURT: I just -- I will once we get  
12 the appearances.

13 MR. DELIKAT: Thank you.

14 THE COURT: Once we get everybody to  
15 announce themselves, then I'll ask everyone to.

16 MR. DELIKAT: Okay.

17 THE COURT: Thank you.

18 Do we have counsel for Ms. Cuomo, Madeline  
19 Cuomo?

20 MR. PIKUS: Good afternoon, Your Honor.  
21 David Pikus, P-I-K-U-S, of Bressler, Amery & Ross,  
22 PC.

23 THE COURT: All right. Good afternoon.

24 And for Ms. McEnaney?

25 MS. MAYO: Katherine Mayo of the Stengel

1 Law Firm for non-party, Ms. McEnaney.

2 THE COURT: Okay. Great.

3 And as Mr. Delikat suggested -- I think  
4 everyone's done it now, but did I miss any  
5 appearances, people who would like to announce  
6 themselves?

7 Very good. Thank you.

8 And so, in the meantime, if you're not  
9 speaking, please mute yourself. And when you do  
10 need to speak, of course it's fine to unmute so that  
11 we can all hear you.

12 On the agenda today -- in order of how I'm  
13 proposing that we handle it -- are two non-party  
14 issues. I'm suggesting that we deal with those  
15 first so that the non-parties can then excuse  
16 themselves.

17 It looks like there's potentially an issue  
18 regarding the scheduling of Ms. Cuomo's deposition.  
19 And then we have Ms. DeRosa's motion to compel with  
20 respect to Ms. McEnaney. And then there may be a  
21 brewing issue with respect to the length of the  
22 plaintiff's deposition, and their rumblings of  
23 extending the discovery schedule as well.

24 As to the last point, I think it's  
25 premature to be doing that. So I don't expect to be

1 making a ruling on any extension requests today.  
2 But I'm just noting that in terms of the agenda in  
3 front of us.

4 So starting with Ms. Cuomo, because I'm  
5 hoping that we can be relatively brief and then let  
6 Mr. Pikus go, do I have it correct, Ms. Schnell --  
7 I'll start with you -- that it looks like we're  
8 confirmed for Ms. Cuomo's deposition on January  
9 30th?

10 MS. SCHNELL: Yes, Your Honor. I believe  
11 Mr. Pikus has a problem with that date, but gave us  
12 another date that is also within that time period,  
13 so we do not have any remaining issues.

14 THE COURT: Okay. Are there any other  
15 issues pertaining to Ms. Cuomo that we need to  
16 discuss?

17 MR. PIKUS: May it please the Court, Your  
18 Honor, David Pikus. No, not at this time.  
19 Obviously, we've agreed to the January 29th date  
20 subject to the parties going before we do. And  
21 we're reserving our rights, of course, in case the  
22 decision is made on the motion to dismiss.

23 THE COURT: Of course. Okay. And, you  
24 know, what I would just say, my intention right now  
25 is that our fact discovery deadline remains January

1 31st. Let's try to keep Ms. Cuomo's date as the  
2 29th. I know -- I am aware of what I have said  
3 before about her following the party deposition. We  
4 have a lot of moving parts here, Mr. Pikus, and I  
5 don't want you pulling the rug out from under  
6 everybody at the very last minute. I want the date  
7 of January 29th with her to hold, please.

8 MR. PIKUS: Understood.

9 THE COURT: Okay. Thank you very much.

10 MR. PIKUS: Okay. Thank you, Your Honor.  
11 I'm going to sign off.

12 THE COURT: Yes, you're welcome to depart.  
13 Thank you.

14 MR. PIKUS: Okay, thank you. Bye-Bye.

15 (Mr. Pikus leaves the conference.)

16 THE COURT: Okay. Thank you.

17 All right. So that takes care of the first  
18 issue. Now we need to turn to Ms. DeRosa's motion  
19 to compel with respect to Ms. McEnaney.

20 Mr. Morvillo or Ms. Sulkowski, would you  
21 like to go first, please.

22 MS. SULKOWSKI: Yes, Your Honor. This is  
23 Sarah Sulkowski for Ms. DeRosa. When we were last  
24 together on October 1st, the Court ordered  
25 Ms. McEnaney to produce videos and some additional

1 text messages if they existed. But at that time, we  
2 had not had an opportunity to extensively compare  
3 the text messages that Ms. McEnaney had produced  
4 with what we had received from plaintiff. We have  
5 since had the opportunity to do that. And as we  
6 expressed in our pre-motion letter, there are  
7 serious, glaring deficiencies in Ms. McEnaney's  
8 production of text messages, which her counsel has  
9 repeatedly described as over-inclusive.

10 We're assuming that representation isn't  
11 knowingly false, and so it -- it seems to evidence a  
12 misunderstanding either of the scope of the subpoena  
13 or the issues at stake in this case. And in either  
14 case, we need to figure out how to get the remaining  
15 relevant materials and responsive materials post  
16 haste, since we have just a little more than a month  
17 remaining before we depose the plaintiff.

18 We provided the Court with a few examples  
19 of highly responsive and relevant text messages not  
20 produced by Ms. McEnaney as field exhibits to our  
21 October 17th letter. We're happy to offer  
22 additional examples in our briefing on a motion to  
23 compel or in a closed session, if Your Honor would  
24 like. But suffice it to say, there are many  
25 additional examples just in comparison with what the



1 plaintiff has produced previously. And of course,  
2 the problem is that we don't know what Ms. Bennett  
3 doesn't still have or hasn't produced that  
4 Ms. McEnaney does have and has withheld. And that's  
5 the whole point of this subpoena. It always has  
6 been.

7           Depending on the volume of additional  
8 responsive messages, we could need substantial time  
9 to review those in addition to what's going to be  
10 required to review the expansive production that  
11 plaintiff has just made on Halloween.

12           So, given all of this, given that Ms. Mayo  
13 has had, and her client have had almost six months  
14 to review these messages and produce the responsive  
15 ones, that they clearly have not done so, and that  
16 time is short, we would propose the top-jet  
17 quick-peek solution, where one member of our team  
18 would review all of the text messages, would confer  
19 with Ms. Mayo about what we found to be responsive,  
20 would return or destroy the non-responsive messages,  
21 and would only then either in concurrence with  
22 Ms. Mayo on what's responsive, or after recourse to  
23 the Court to make those responsiveness  
24 determinations, would only then share with other  
25 counsel on our team.

1           The only proposed solution we've heard from  
2       Ms. Mayo is that we specify each and every  
3       responsive document that wasn't included, and she  
4       can then turn those over. And of course, that's  
5       not -- that doesn't solve the problem that the  
6       subpoena was designed to solve, which is, we don't  
7       know what we don't have from plaintiff.

8           Now, Ms. McEnaney has never moved to quash  
9       this subpoena, but if she did, the standard would  
10      be -- the onus would be on her to show an undue  
11      burden. And the quick-peek approach that we're  
12      proposing, imposes no burden at all on Ms. McEnaney  
13      or her counsel. Confidentiality is ensured by the  
14      protective order in place. We would be assuming the  
15      burden and cost of the responsiveness review. And  
16      so this is, we submit, the lowest friction, most  
17      efficient solution possible. And we've never heard  
18      any explanation of Ms. Mayo's opposition to it. At  
19      this stage it's the solution that's required to  
20      effectuate Ms. DeRosa's right to these responsive  
21      materials.

22           THE COURT: So, Ms. Mayo, Ms. DeRosa's  
23      counsel has identified in their letter at least  
24      three big spans of time during which there are no  
25      text messages that Ms. McEnaney has produced.

1 Have you tried going to Ms. McEnaney's  
2 texts for these windows and seeing if there are  
3 additional responsive text messages or videos that  
4 need to be produced?

5 MS. MAYO: Thank you, Your Honor. I have  
6 not, but not because of any resistance on my part.  
7 It's more a matter of the fact that any meet and  
8 confer was very abruptly concluded with the only  
9 solution -- it's ironic that defendant, DeRosa,  
10 saying the only solution I proposed was that they  
11 provide me every text message or area where they see  
12 something that they believe might be relevant or  
13 they call "relevant," that should be produced.  
14 That's the only solution that they provided, which  
15 is to have Ms. McEnaney turn over each and every  
16 text message.

17 And as far as my experience has shown and  
18 the case law shows, that's simply not how discovery  
19 proceeds. A corporation isn't required to open up  
20 their file room and allow opposing counsel to walk  
21 in and examine all the files. And notably, we're  
22 not talking about a corporation here. We're talking  
23 about a young woman.

24 And even Ms. Sulkowski said she would  
25 require substantial time to review any additional

1 messages. Can you imagine the time that has been  
2 demanded on this young woman and myself? That's not  
3 resistance. It's that, rather than -- I'm happy to  
4 review those messages and produce any and all that  
5 could be responsive. There's no gamesmanship here.  
6 You know, and in addition, someone who's responding  
7 to a subpoena is not expected to be perfect.

8 I'm sure there may be some messages that  
9 were missed, but far and away, the vast majority of  
10 anything that was responsive, certainly was. But  
11 I'm not willing to turn over my client's entire  
12 phone, essentially all of her communications with a  
13 party, which will reveal all kinds of things that  
14 have nothing to do with this case. And it is a  
15 privacy issue. And that is relevant. It's highly  
16 relevant. Case law shows that a non-party's privacy  
17 interests are important.

18 So I simply wanted a middle ground. And I  
19 said, as we had this meet and confer, here's my  
20 first proposal. And Ms. Sulkowski's response was,  
21 no, that's not acceptable, we want them all.

22 THE COURT: Well, I've already --

23 MS. MAYO: And I could have come up with  
24 other possible solutions.

25 THE COURT: Okay. Have you thought of any

1 other possible solutions that you're in a position  
2 here to discuss today?

3 MS. MAYO: I know with other non-parties,  
4 and it's a practice that's very common in discovery  
5 to use a word search, for example, keywords.

6 THE COURT: So far you have not -- the text  
7 that you've turned over have not been the result of  
8 a word search?

9 MS. MAYO: No, I personally read every  
10 single one, which is far superior to a board search.

11 THE COURT: Did you include -- did your  
12 review include -- I'm looking at Page 2 of  
13 Ms. DeRosa's letter at ECF Number 312, and there she  
14 represents that there are no messages for July 1 to  
15 August 8, 2019, June 14th to June 19th, 2020, and  
16 July 9th to October 6th.

17 Did you review those time periods  
18 previously?

19 MS. MAYO: I did.

20 THE COURT: Okay, and you didn't find any  
21 responsive texts during that time period?

22 MS. MAYO: I didn't deem them responsive,  
23 but I'm happy to re-review. I just want to  
24 emphasize that there's no resistance on  
25 Ms. McEnaney's part to supplement her responses.

1 That's simply not what's happening here. I just  
2 want a fair solution.

3 THE COURT: Right. Well, you should be  
4 reviewing -- and I'll give Ms. Sulkowski a chance in  
5 a minute if there are any other time periods, time  
6 gaps that she wants to raise, but I am going to  
7 direct, if it looks like -- based on what Ms. DeRosa  
8 has said in her letter, there are responsive texts  
9 during those three periods that appear not to have  
10 been produced.

11 I understand that Ms. McEnaney is a  
12 non-party, and so, you know, what the hot, burning  
13 issues are in this case may be less familiar to you  
14 when you're doing your review, but certainly any  
15 text messages about her employment with the State of  
16 New York and the governor's office, as well as  
17 Mr. Cuomo, or any of the defendants, whether by name  
18 or by implication, any of those texts should -- the  
19 Court would deem those responsive, and those should  
20 be produced.

21 So there may be -- there may be code that  
22 you have to decipher a little bit, and that may  
23 require some, you know, translating with your  
24 client. But certainly the Court is going to direct  
25 that Ms. McEnaney -- you and Ms. McEnaney go back

1 for the three periods in the letter, at least, and  
2 produce any additional responsive text messages,  
3 okay?

4 MS. MAYO: Certainly. And I assure the  
5 Court that anything that had to do with employment,  
6 I would estimate 97% has been turned over. DeRosa's  
7 counsel is really getting into the weeds in terms of  
8 trying to build a case here, but I will do so, and I  
9 will gladly provide them.

10 THE COURT: They are certainly thorough.

11 Ms. Sulkowski, are there any other time  
12 gaps that you've identified other than the three  
13 listed in your letter?

14 MS. SULKOWSKI: We have identified numerous  
15 other missing messages. And I can follow up with  
16 Ms. Mayo and provide her with the time periods. But  
17 of course, the problem is that, again, we don't  
18 know -- there are many time periods missing.  
19 Responsive messages from all of them should be  
20 produced. And we can't identify specific messages  
21 that fall within other time periods if we don't  
22 already have them from plaintiff. And those are the  
23 messages we need the most.

24 THE COURT: You already asked me once to  
25 make her turn over all 4,000 text messages and I

1 denied that. I'm not going to do that today. I  
2 understand that you proposed -- you've offered a  
3 proposal that you think would mitigate the burden.  
4 But I'm very concerned about Ms. McEnaney's privacy.  
5 And so turning over 4,000 of her text messages is --  
6 I am not comfortable with doing that. I think that  
7 what you propose may be a resource, may minimize the  
8 resource burden, but it does not minimize the  
9 privacy burden that's placed on Ms. McEnaney by  
10 turning over all of her text messages.

11 So if -- in addition to the three times in  
12 your letter, if there are other spans of time that  
13 you've identified that you want Ms. Mayo to go back  
14 and double-check, you can communicate with her to do  
15 that. But I am not going to order -- I'm not going  
16 to grant your request for her to turn over wholesale  
17 all 4,000 text messages, or however many there are.

18 MS. SULKOWSKI: Your Honor, we respectfully  
19 would like an opportunity to brief this issue.

20 THE COURT: You've already written me  
21 letters. You've briefed this issue. We're done.  
22 We've got to get to the end of this. You've  
23 submitted a letter brief. That's sufficient. If  
24 you want to brief this issue, it's not going to be  
25 decided until the end of the year, and it's too



1 late. And that's not a reason to grant you a  
2 discovery extension.

3 We need to do this now. If Ms. Mayo is  
4 going to do the review, she needs to do it now. I'm  
5 going to put time constraints on her doing it so  
6 that she can turn it over to you so that you have it  
7 before Ms. Bennett's deposition. But re-briefing an  
8 issue that you've already briefed is not a good  
9 solution. That's not a good use of resources.  
10 Ms. Mayo's resources are much better devoted to  
11 finding the text messages that you wanted to find  
12 than responding to a letter brief from you.

13 MS. SULKOWSKI: Your Honor, our concern  
14 continues that she has missed these messages twice,  
15 and they miss them again. It's not only employment,  
16 it's also substance use. It's also sexual acting  
17 out. It's numerous, numerous topics that don't  
18 appear to have been encompassed in her review of the  
19 first two times.

20 At a very minimum, we --

21 THE COURT: Then you should have a --  
22 longer than a 10-minute conversation with her to  
23 explain to her what it is she's looking for. A meet  
24 and confer for 10 minutes, that's barely a meet and  
25 confer.

1 MS. SULKOWSKI: I have to object to the  
2 characterization. We certainly did not hang up on  
3 Ms. Mayo. She did not indicate that she had more to  
4 offer in that conversation. We would have been  
5 happy to talk to her as long as necessary to resolve  
6 this. There were no other suggestions forthcoming.

7 If she is going to do this review and  
8 produce additional messages to us, we would ask for  
9 a very tight turnaround time, and we will provide  
10 her with time periods when we need the messages.

11 THE COURT: Okay, but the more you ask her  
12 to look for, the longer it's going to take her to do  
13 it. So you do need to -- and we're going to talk  
14 about this when we get to Ms. Bennett's deposition.  
15 You guys need to prioritize.

16 What are the most important things? I  
17 understand responsiveness is very broad, and it  
18 encompasses a lot. But what are the most important  
19 things that you think Ms. McEnaney has, that she has  
20 not already produced? I would like to get her  
21 higher than 97%, but I wouldn't be surprised if  
22 there's one or two things that are missing. That  
23 always happens in discovery. We need to be  
24 realistic and practical.

25 So there are three time periods in your

1 letter. If there are other time periods that you  
2 want to identify for her, that's fine. But the more  
3 you ask her to search for, the longer it's going to  
4 take. And it is not going to be a reason for us to  
5 move the discovery deadline, or to move  
6 Ms. Bennett's deposition.

7 MS. SULKOWSKI: Your Honor -- Your Honor,  
8 respectfully, it's been six months almost since we  
9 served the subpoena. Ms. Mayo went dark for nearly  
10 a month after asking for and being granted multiple  
11 extensions. None of that courtesy should be  
12 prejudicing Ms. DeRosa at this point. We need all  
13 the responsive text messages.

14 THE COURT: You have hundreds of text  
15 messages from her. Ms. DeRosa is not prejudiced.  
16 She has hundreds of text messages. And I'm ordering  
17 that she go back and do a second round, informed by  
18 a conversation with you, to make sure that we get as  
19 close to complete coverage as possible. But she is  
20 right that it is not going to be perfect. But she  
21 is a non-party, and I am mindful of the burden on  
22 her, and I am mindful of her privacy interests. And  
23 so I'm trying to balance all those things against  
24 Ms. DeRosa's need for this discovery, which I'm  
25 perfectly willing to acknowledge. But we need to be

1 reasonable, and we need to move forward.

2 So my ruling is that I'm denying your  
3 request to order her to wholesale turn over all  
4 4,000 documents. But I am going to direct her to go  
5 back and search -- re-search the three time periods  
6 that are identified in your letter, as well as any  
7 additional time periods that you want to identify to  
8 her. And I would strongly encourage you to remember  
9 that the more you ask of her, the more time it's  
10 going to take, and the less time you'll have to  
11 review whatever it is she turns over ahead of the  
12 deposition.

13 MS. SULKOWSKI: Your Honor, may we have a  
14 deadline for this production?

15 THE COURT: I was just going to ask her  
16 that.

17 So, Ms. Mayo, what is your turnaround time  
18 for reviewing these three additional periods? And  
19 there may be some other odds and ends that  
20 Ms. Sulkowski follows up with you about.

21 MS. MAYO: Sure. I could do it in two  
22 weeks after receiving the list.

23 THE COURT: Well, you have the three. You  
24 can go ahead and get started on the three that are  
25 in the letter today. There's no reason we can't

1 start doing that today.

2 MS. MAYO: Sure. Well, I do have other  
3 things to do, but I will get it done very quickly.

4 THE COURT: I don't need 12-22. I mean,  
5 you have information about the areas that they think  
6 are missing already, and Ms. Sulkowski will follow  
7 up with you about any others. But then two weeks  
8 from today is the 21st, okay?

9 MS. MAYO: How about a timeline for any  
10 additional time periods that they're seeking? I'm  
11 afraid that could get hairy.

12 THE COURT: Ms. Sulkowski, how quickly do  
13 you think you can let Ms. Mayo know about any  
14 additional time periods you're wanting her to check?

15 MS. SULKOWSKI: Monday.

16 THE COURT: Okay. So how about --

17 MS. MAYO: Could I have two weeks from  
18 Monday?

19 THE COURT: Well, how about we say two  
20 weeks from today for the ones that you already know  
21 about, that's the 21st. And then I'll give you  
22 until November 26th for any additional ones that  
23 Ms. Sulkowski identifies for you by Monday, okay?

24 MS. MAYO: That works. Thank you, Your  
25 Honor.

1 MS. SULKOWSKI: Thank you.

2 THE COURT: Okay.

3 MS. SULKOWSKI: Thank you, Your Honor. If  
4 I might raise one additional issue while we have  
5 Ms. Mayo here.

6 We received videos and images that appear  
7 to have been embedded in text messages from  
8 Ms. McEnaney. We didn't actually -- she sent them  
9 on the 31st. We didn't actually receive them until  
10 the 4th, which is why they're not raised in our  
11 letter. But we note that there are no videos or  
12 images produced after 2020, but we know that there  
13 were embedded images in 2021, for example.

14 And so while we have Ms. Mayo here, I'd  
15 just like to ask that any videos and images after  
16 2020 be produced.

17 THE COURT: Can you identify for her the  
18 messages that have the embedded videos that are not  
19 there? Or do you have the messages, and you just  
20 don't have the video? Or the videos are somehow  
21 kept separately?

22 MS. SULKOWSKI: We have text messages that  
23 plaintiff has produced that show embedded images  
24 that are not included in those messages. And so we  
25 believe Ms. McEnaney would have those images. I can

1 certainly give Ms. Mayo examples. Again, it's a  
2 problem that we don't know everything that we don't  
3 have.

4 THE COURT: Sure, I understand.

5 So, Ms. Mayo, may I ask you, did you search  
6 for videos that Ms. McEnaney has after 2020?

7 MS. MAYO: We did, to the best of my  
8 ability -- to the best of my knowledge. I'm going  
9 to have -- I'd have to circle back with my client  
10 because she's the one who's in possession of the  
11 phone, and we worked together to -- it was actually  
12 quite a logistical challenge to download as many of  
13 the images and videos as possible. I can circle  
14 back and find out if there was an issue with that,  
15 or if there are images and videos that were not  
16 downloaded. That was not a conscious decision on  
17 either of our part.

18 I think we just -- I'm willing to set out a  
19 timeline right here and now. I don't want to engage  
20 in any additional motion practice, and I'm sure the  
21 Court does not want to do so either.

22 THE COURT: I understand.

23 MS. MAYO: Could we get some time beyond  
24 the deadline for the text messages to start to deal  
25 with this?

1 THE COURT: Let me just -- hold on one  
2 second. I'm just looking for the various deposition  
3 dates to -- so Ms. Bennett is not going to be until  
4 January. So what -- how about I set a deadline of  
5 December 6th on the videos, okay?

6 MS. MAYO: That works for --

7 THE COURT: After Thanksgiving.

8 MS. MAYO: That works, Your Honor.

9 THE COURT: So, Ms. Sulkowski, I would  
10 encourage you to the extent you've identified  
11 messages where the video is not there, to share  
12 those with Ms. Mayo. But, Ms. Mayo, please go back  
13 to Ms. McEnaney and make sure independent of  
14 whichever ones that Ms. Sulkowski shows you, that  
15 there isn't any -- that we're not in a situation  
16 where there are videos from 2021 that are  
17 responsive, that need to be produced, okay?

18 MS. MAYO: Certainly doable.

19 THE COURT: Okay. Good. Thank you.

20 MS. SULKOWSKI: Thank you, Your Honor.

21 THE COURT: All right. Ms. Sulkowski, any  
22 other points relating to Ms. McEnaney?

23 MS. SULKOWSKI: No, Your Honor. Thank you.

24 THE COURT: Okay. Thank you.

25 All right. Ms. Mayo, I think we can let



1     you go. Please do make sure that you look at the  
2     post-conference order, which will have the deadlines  
3     that we just talked about. And I appreciate you  
4     going back and being as thorough as humanly  
5     possible, okay.

6             MS. MAYO: Thank you very much, Your Honor.

7             THE COURT: All right. We can excuse you  
8     now. Thank you.

9             MS. MAYO: Thank you. Take care. Bye.

10            THE COURT: Thank you.

11            (Ms. Mayo leaves the conference.)

12            THE COURT: Okay. So based on the parties'  
13     submission, it looked like there was a percolating  
14     issue with respect to the length of Ms. Bennett's  
15     deposition. I don't know if -- I'll give the  
16     defendants a chance to tell me where things stand on  
17     this.

18            Does one of the defendants' counsel want to  
19     tell me whether this is ripe yet, or if the parties  
20     are still working on it?

21            MS. GLAVIN: Good afternoon, Your Honor.  
22     Rita Glavin. I think I can take the lead on this.

23            THE COURT: Okay.

24            MS. GLAVIN: To give you a -- Judge, just  
25     to give you a little bit of an update, because I

1 think this will impact how you think about this, and  
2 it certainly is impacting how we're thinking about  
3 this.

4 We got a production on October 31st from  
5 Ms. Bennett. The production is -- it's quite  
6 voluminous. It's approximately 7,700 files. Our  
7 vendor has not completed loading them. Within that  
8 there are 1,000 media files, which I think Your  
9 Honor understands to be either video or audio.

10 And given Your Honor's familiarity with the  
11 case, the videos, a lot of them are Ms. Bennett sort  
12 of documenting things going on in her life,  
13 contemporaneous. There -- in those, also within  
14 this, there are approximately 2,000 files that at  
15 this point we're getting a "Image cannot be opened."  
16 And we will have to address that because I'm -- we  
17 have not had a chance to confer with plaintiff's  
18 counsel about the production. But I wanted Your  
19 Honor just to be aware of what's in there.

20 So there's about 2,000 that as of now we're  
21 being told we can't review. And I think Your Honor  
22 knows the issue with the media files is they all  
23 have to be reviewed because you can't do -- they're  
24 not easily searchable. I'll give you a flavor just  
25 for some of them that -- you know, some of -- our

1 team has been able to look at.

2 There are some clear, you know, right off  
3 the top, material, video files in there that we  
4 hadn't seen before. There are some from late 2019  
5 where Ms. Bennett is talking about her job, talking  
6 about, you know, quitting the job. There is a text  
7 message that we've seen where she's drafted a  
8 resignation letter. This is in late 2019.

9 And I just -- this is just by way of  
10 example, because, of course, one of the key points  
11 in the case is Ms. Bennett claiming that she had  
12 left the Chamber because of sexual harassment, or it  
13 was retaliation, and the job she went to, you know,  
14 was retaliatory and a do-nothing job. This, of  
15 course, I think you understand -- Your Honor would  
16 understand the significance to the defense of this.  
17 I get, and I'm quite certain plaintiff will  
18 disagree, you know, with what the significance is.  
19 But, you know, from our perspective it's quite  
20 significant.

21 THE COURT: Sure.

22 MS. GLAVIN: What we have -- what we have  
23 done, and it's in the letter, is we've scheduled --  
24 you know, we've scheduled all the party depositions.  
25 We have dates for those.

1           Go ahead if you had a question. I just  
2           wanted -- I had a little more context, but if you  
3           have a question, Judge, please jump in.

4           THE COURT: No, go ahead.

5           MS. GLAVIN: Okay. So what we have done,  
6           and I think Your Honor got this when we met with you  
7           a month ago, and it's reflected in our status letter  
8           from September. The vast, and I really mean the  
9           vast majority of the document productions, and what  
10          we believe to be the most material to Ms. Bennett's  
11          claims and our defense have all happened in the last  
12          90 days. We have not gotten through even the  
13          document production that occurred in August, which  
14          was in the range -- and it was late August. It was  
15          in the range of 4,000 to 5,000 files.

16          So, A, I give that to you because -- what  
17          you said to us at the last conference. And you were  
18          right and it was fair, is you have a January 31st  
19          deadline, and you are not -- you know, you want to  
20          see that we're making progress, and we're working  
21          and doing everything we can. And so I want you to  
22          understand that from the defendants' perspective --  
23          and you can be sure that we have regular calls with  
24          counsel for our three co-defendants in terms of what  
25          we're seeing in those productions. There's also --

1 so there's a lot of documents that are important to  
2 us that only recently got produced.

3 And, you know, we are -- we are where we  
4 are, okay. But I would say that when the Court in  
5 March of this year set the January deadline, and our  
6 willingness to say that we thought that was a  
7 reasonable deadline, was based on the representation  
8 that Ms. Bennett's production would be produced --  
9 would be completed by June, and that just didn't  
10 happen. And so we feel that we lost four months.  
11 That's just where we are.

12 On the issue of the depositions, we had --  
13 and to also give you a flavor for where we think  
14 we're at, we took -- there are -- Ms. Bennett has  
15 approximately, I think it's eight or nine, you know,  
16 mental health medical providers that are directly  
17 relevant to this. We took two of the depositions in  
18 August. We had noticed two more. But because of  
19 the significance of the document production that we  
20 got in late August, it was clear to us that we would  
21 need those documents and to have reviewed them for  
22 the two upcoming depositions we had noticed. And so  
23 we had to put those off.

24 And with respect to one of the providers  
25 that we did in August, after his deposition, we got

1 some pretty critical pieces of two videos that we  
2 would like to have showed that provider that  
3 directly related to what he -- the services he was  
4 providing to Ms. Bennett.

5 But where we are in terms of what we think,  
6 because we have talked amongst ourselves,  
7 particularly given what Your Honor had to say at our  
8 last conference, we have the party depositions  
9 scheduled. And with respect to what we're looking  
10 at is that there are now -- if we have seven mental  
11 health providers that we would need depositions of,  
12 two of the seven are ones that we had noticed but  
13 then had to put off because medical records were  
14 incomplete, or we were also getting documents from  
15 Ms. Bennett that were contemporaneous with whatever  
16 treatment that she was being provided that we  
17 realized were going to be important for us in  
18 questioning the medical providers.

19 In addition to the medical providers in  
20 terms of fact -- third-party fact witnesses -- and  
21 we're still, again, talking through this with  
22 defense, with our co-counsel, but Your Honor, I  
23 think knows that, for instance, Ms. DeRosa -- and  
24 her counsel can speak to this -- given the  
25 allegations of Ms. DeRosa and, you know,

1 retaliation, what the job was that Ms. Bennett then  
2 moved to in health policy, there are different  
3 questions and different people that Ms. DeRosa  
4 certainly would want to depose that go directly to  
5 the allegations against her.

6 THE COURT: Of course.

7 MS. GLAVIN: And I think this -- yeah, and  
8 I think the same was true for Ms. Mogul and  
9 certainly with respect to Governor Cuomo, because  
10 we're, of course, keenly focused on all of the  
11 allegations prior to her job move.

12 THE COURT: Right.

13 MS. GLAVIN: So we have come up with the  
14 list, the four of us, because we're trying to be  
15 efficient on this and do exactly what you, you know,  
16 directed us to do. We think it's going to be at  
17 least eight fact witnesses. In that ballpark. It  
18 could change depending on what we see in the current  
19 production, which, again, is not fully loaded.

20 But I just wanted to give you that  
21 background to have a sense of where we are because I  
22 don't want you to think we've been sitting around  
23 twiddling our thumbs. We're trying to do it.

24 THE COURT: I can tell by your submissions  
25 that you're not just sitting around, but all that

1 context is very helpful.

2 I will just reiterate, I am -- I don't  
3 think we should be considering extending the  
4 schedule today. I understand everything that you  
5 just said, and you're laying the groundwork for that  
6 request. You know, January 31st is still three  
7 months away. A lot can happen, and a lot can be  
8 done in three months. We are going to have another  
9 conference in early December, and, you know, we can  
10 reassess at that time whether an extension is  
11 necessary. But I think it's premature today.

12 You know, the schedule that we adopted is  
13 the one that the party has proposed. And you'll  
14 remember -- and I understand everything that you  
15 said about the delays in Ms. Bennett's production.  
16 And I'm not using "delay" in a derogatory sense.  
17 I'm just -- unexpected -- unexpectedly took longer.  
18 And I'm mindful that the parties probably didn't  
19 contemplate that when they proposed a schedule  
20 earlier this year. But I do remember everybody  
21 thinking that we can get it all done by January --  
22 at the end of January. And that was a good base  
23 belief on all of our parts. Things never go 100%  
24 according to plan.

25 But I would like to keep our pedal to the



1 metal as much as possible over the next few weeks in  
2 the hope that, you know, we can try to get as much  
3 done as possible, or we can make decisions about --  
4 I know you said eight fact witnesses. Maybe you  
5 don't need to depose all eight. That decision is up  
6 to you, and I'm not prejudging it. I'm just saying,  
7 you know, we always have to make decisions about how  
8 we're going to expend our resources in the time that  
9 we have.

10 And so I think the discipline of January  
11 31st is good for all of us because it encourages  
12 people like we just had with Ms. McEnaney. If we're  
13 anticipating that it has to be done when it has to  
14 be done, magically people work within the time that  
15 they have.

16 So I appreciate all the context,  
17 Ms. Glavin, and we'll have a transcript of this, and  
18 you won't have to repeat it all when we talk again  
19 in December.

20 MS. GLAVIN: Judge, thank you.

21 One thing, too, I wanted to mention to you  
22 is, we actually weren't going to ask for you to rule  
23 on this today. I just wanted to let you know what  
24 was going on. I think in the joint status letter,  
25 we thought it best to address the discovery schedule

1 with you in a few weeks when we've had more chance  
2 to look at this.

3 The other thing I wanted to tell you about  
4 as well, about we think we would need at least  
5 eight, just so you know, that was whittled down from  
6 a much longer list of people that we thought we  
7 absolutely needed. So this was -- and now I'm  
8 kicking myself because I feel like I should have  
9 told you it was 15, and then you'd be so happy when  
10 we got to eight.

11 THE COURT: Then you'd get the credit.  
12 Then you'd get credit for cutting it.

13 MS. GLAVIN: Yes, I know. I was so --  
14 so -- but I want you to know that that was the  
15 thinking that went into it. And I do -- you know, I  
16 give my colleagues credit, you know, in this defense  
17 group, because there has been a fair amount of  
18 compromise, because we don't want to come to you  
19 unless it's something that we absolutely need. And  
20 people have given in within our group, you know,  
21 this deposition is more important, and that -- we're  
22 trying to work in that framework. And it is not  
23 always easy, but it's -- you know, with four  
24 defendants, as I'm sure Your Honor is aware.

25 THE COURT: Yeah. Just to circle back, the

1 question that teed us off was whether the length of  
2 Ms. Bennett's deposition, whether the parties were  
3 still working on that themselves, or if we need to  
4 decide that today. And like I said, I do have time  
5 the week after Thanksgiving, and I'm hoping that we  
6 can have a conference then to talk about things  
7 further.

8 So do you think on the issue -- and I do  
9 want to hear from Ms. Schnell or one of her  
10 colleagues in a moment, of course, but is the issue  
11 with respect to the length ripe as yet, or are you  
12 going to keep working on that?

13 MS. GLAVIN: Look, I think Ms. Schnell can  
14 speak for herself. I think they are dead set on two  
15 days, and then coming to the Court. I think where  
16 we're at on this, is, you know, it may mean that we  
17 need to do another letter to you just focused on  
18 that issue, because I think you having the level of  
19 detail would put you in a better position to rule.

20 THE COURT: Let me give Ms. Schnell or one  
21 of the other plaintiff's counsel a chance if you  
22 want to weigh in on anything that Ms. Glavin said  
23 and/or the issue of the length of Ms. Bennett's  
24 deposition, which I'm leaning toward not making a  
25 ruling on that today, but if there's any other

1 context that you want to share.

2 MS. SCHNELL: Your Honor, Laura Schnell.

3 I mean, just in terms of the whole long  
4 prelude to why they might need more time for  
5 discovery, the only point I will make is how ironic  
6 it is you ask, and we are ordered to, and,  
7 therefore, we give them so many texts and stuff,  
8 complete threads of texts that have nothing to do  
9 with nothing. And then using that onerous  
10 production, which was incredibly onerous and  
11 expensive for plaintiff to, therefore, need more  
12 time. But we are where we are, again, as the Court  
13 said.

14 On the length of the deposition, we had  
15 previously had a meet and confer last winter. We  
16 had agreed on two days instead of the one that the  
17 rules provide for. Two days of six hours each. So  
18 for a total of 12 hours, an additional five above  
19 what the rules provide. We have now agreed, subject  
20 to it being the end of it, to another hour each day.  
21 So in other words, two full days of seven hours.  
22 And that is more than -- again, we're happy to brief  
23 it as well, Your Honor, but that is more than almost  
24 any court we've seen has ordered for a single  
25 plaintiff case.

1 THE COURT: Yes. No, everyone, all the  
2 counsel on this call have been involved in  
3 complicated litigation. I know it's hard to think  
4 of one that's less complicated than this one, but  
5 certainly more complex litigations. And a  
6 deposition of two full days is unusual. Certainly  
7 not the norm, obviously, given the rule.

8 But I'm happy to let the parties keep  
9 talking about this issue. And if we need to, we'll  
10 have submissions before the next conference that tee  
11 up if there remains a dispute between them about  
12 whether the Court should order at this point in time  
13 any longer deposition of Ms. Bennett.

14 MR. DELIKAT: Your Honor, it's Mike Delikat  
15 and Ms. Mogul. If I could be heard just briefly on  
16 the length of the deposition issue, and I know we're  
17 not deciding that today, but this is an unusual  
18 case. We spent a lot of time today talking about  
19 the volume of production, the videos with  
20 information directly relevant to the actions of  
21 Defendant Cuomo that are being challenged here. And  
22 it's going to take a lot of time to plod through the  
23 factual allegations related to the harassment claims  
24 in this case.

25 Put on top of that the fact that she had

1 almost ten treating physicians, and she has claims  
2 for severe emotional distress in this case with  
3 conflicting things that she told many of those  
4 medical providers, there's that second element in  
5 this case which makes it unusual.

6 And then put on top of that, besides  
7 Defendant Cuomo, we have three individuals that  
8 allegations of aiding and abetting the alleged  
9 harassment have to be explored in some detail.

10 And so when you put those three  
11 subcategories together, this does make this the  
12 exceptional case where it really would be impossible  
13 to complete everything within just two days.

14 THE COURT: Okay. Thank you.

15 Any of the other defendants' counsel wish  
16 to make -- add anything to the record on this,  
17 mindful that we're not ruling on it today?

18 MR. MORVILLO: Your Honor, this is Greg  
19 Morvillo on behalf of Ms. DeRosa.

20 I did want to add to the conversation, even  
21 though I know there will be no ruling on it today,  
22 about the extension of the deadline.

23 We have subpoenaed Ms. Boylan for a  
24 deposition. We were trying to get a date for her in  
25 January. Her lawyers have refused to give us a

1 date, saying earlier this week, I believe, that they  
2 are going to move to quash the subpoena.

3 And although I have not seen any motion  
4 from them, these are sort of the issues that we're  
5 running into with third parties, that they don't  
6 want to be deposed, and they understand there's a  
7 deadline and think if they can push it out, then  
8 that's good for them. But that's part of the reason  
9 that we think we're going to need an extension, is  
10 because the third parties are not being eager --  
11 let's say eager to be deposed in this case.

12 THE COURT: Yeah. Okay. Well, I would --  
13 if there is going to be motion practice, I know it's  
14 not necessarily in your control, Mr. Morvillo, but  
15 getting a -- if it's a definitive no, getting that  
16 sooner rather than later, and then getting the  
17 actual motion filed, will be helpful. Not that I  
18 love getting motions --

19 MR. MORVILLO: Understood.

20 THE COURT: -- but I'd rather decide the  
21 issue in time, than hear it at the last minute.

22 MR. MORVILLO: Understood, but Your Honor  
23 is right. I don't control when and whether they  
24 make their motion.

25 THE COURT: Of course not, but you can also

1 be a pest. And, you know --

2 MR. MORVILLO: I am good at that.

3 THE COURT: I'm not saying you personally.  
4 I'm saying, if it's a definitive no, just say, we  
5 need to know that sooner rather than later, so that  
6 if we need to take it up with the judge, that we can  
7 do that.

8 MR. MORVILLO: Understood, Your Honor.  
9 We'll get on it, and I will be a pest.

10 MS. GLAVIN: Okay.

11 THE COURT: All right. Any other  
12 defendants wish to be heard?

13 Okay. Ms. Schnell, any other issues from  
14 Ms. Bennett's perspective to address today?

15 MS. SCHNELL: No, Your Honor.

16 THE COURT: Okay. Any other defendants  
17 wish to raise any issues?

18 Okay. Silence is nice.

19 So you'll see a post-conference order from  
20 us that addresses Ms. McEnaney and Ms. Cuomo, but  
21 aside from that, we'll reserve everything.

22 How is 2:30 on December 4th for everyone  
23 for another call?

24 MS. GLAVIN: That works for Governor  
25 Cuomo's attorneys, Your Honor.



1 MS. SCHNELL: It works for plaintiff's  
2 attorneys, Your Honor.

3 MR. MORVILLO: Fine for DeRosa.

4 THE COURT: Everybody okay with that?  
5 Okay.

6 MS. MAYO: Yes.

7 THE COURT: If you could -- great. If you  
8 could get me any -- if you could get me a joint  
9 letter by, let's say, 2:00 on December 2nd, so that  
10 you don't have to write it over the weekend, or at  
11 least you have until 1:00 to finalize it, or sorry,  
12 2:00 on December 2nd for a joint letter with any  
13 issues that you want me to address, okay.

14 All right. Thank you very much, everyone.  
15 Have a nice Thanksgiving holiday in the meantime,  
16 and I will speak to you on December 4th at 2:30.  
17 Thank you very much. We'll be adjourned.

18 MR. MORVILLO: Thank you.

19 MS. SCHNELL: Thank you, Your Honor.

20 THE COURT: Thank you.

21 MR. HAMID: Thank you.

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C E R T I F I C A T E

I, Adrienne M. Mignano, certify that the foregoing transcript of proceedings in the case of Bennett v. Cuomo, et al.; Docket #22CV7846 was prepared using digital transcription software and is a true and accurate record of the proceedings.

Signature Adrienne M. Mignano  
ADRIENNE M. MIGNANO, RPR

Date: November 11, 2024